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15 UNITED STATES DISTRICT COURT
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17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18
19 OAKLAND DIVISION

20 EPIC GAMES, INC.,
21 Plaintiff, Counter-defendant

22 v.
23 APPLE INC.,
24 Defendant, Counterclaimant

25 IN RE APPLE IPHONE ANTITRUST
26 LITIGATION

27 DONALD R. CAMERON, *et al.*,
28 Plaintiffs

v.
APPLE INC.,
Defendant.

Case No. 4:20-cv-05640-YGR-TSH
Case No. 4:11-cv-06714-YGR-TSH
Case No. 4:19-cv-03074-YGR-TSH

**DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO FILE THE
JOINT DISCOVERY LETTER BRIEF
UNDER SEAL**

Hon. Yvonne Gonzalez Rogers
Hon. Thomas S. Hixson

1 Apple Inc. (“Apple”) brings this administrative motion under Civil Local Rules 7-11(a) and 79-
 2 5(d)-(e) for an order granting Apple leave to file under seal the Joint Discovery Letter Brief Regarding
 3 Discovery from Non-Party Samsung Electronics America, Inc. (the “Joint Discovery Letter Brief”) and
 4 supporting Exhibits 3-5.

5 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party
 6 “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or
 7 otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). Under this standard, a party seeking
 8 to seal a document generally must overcome the “strong presumption in favor of access” that applies
 9 to court documents other than those that are traditionally kept secret. *Kamakana v. City & Cnty. of*
 10 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). However, the “public has less of a
 11 need for access to court records attached only to non-dispositive motions because those documents are
 12 often ‘unrelated, or only tangentially related to the underlying cause of action.’” *Id.* at 1179 (citations
 13 omitted). Instead, a “‘good cause’ showing under Rule 26(c) [of the Federal Rules of Civil Procedure]
 14 will suffice to keep sealed records attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA*
 15 *Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. Jun. 17, 2013).
 16 A party seeking to seal such material must make a “particularized showing of good cause with respect
 17 to any individual document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187
 18 F.3d 1096, 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-
 19 5(b).

20 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to file
 21 information designated as confidential by an opposing party or a non-party. This Administrative
 22 Motion is based on Plaintiff and Counter-Defendant Epic Games, Inc.’s (“Epic’s”) designation of
 23 information in the Joint Discovery Letter Brief and Exhibits 3-5 as “CONFIDENTIAL” or “HIGHLY
 24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the protective orders entered in the related
 25 above-captioned cases. Apple does not believe that the Joint Discovery Letter Brief or Exhibits 3-5
 26 meet the standard for sealing, but is filing them under seal as a courtesy to Epic and Samsung. Pursuant
 27 to subsection (e)(1) of Local Rule 79-5, Epic has four days to file a declaration establishing that the
 28 material is “sealable” (as defined in Local Rule 79-5(b)).

1 Dated: January 21, 2021

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

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4 By: /s/ Jay Srinivasan
Jay P. Srinivasan

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